

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

INTEROCEAN COAL SALES, LDC,

Plaintiff,

v.

EVONIK TRADING GmbH, an alien  
corporation, EVONIK DEGUSSA  
CORPORATION, an Alabama corporation,  
EVONIK INDUSTRIES, AG, an alien  
corporation and EVONIK STEAG GmbH, an  
alien corporation,

Defendants.

CIVIL ACTION 11cv0940 (NRB)

**DECLARATION OF PATRICK J. HUGHES**

I, PATRICK J. HUGHES, hereby declare as follows:

1. I am admitted to practice before this Court and a member of the law firm of Connell Foley LLP, counsel for defendant Evonik Degussa Corporation.

2. I submit this declaration pursuant to 28 U.S.C. §1746 in support of the Motion of defendant, Evonik Degussa Corporation, to Dismiss Pursuant To Fed. R. Civ. P. 12(b)(6).

3. In support of this motion, I attach the following exhibit:

<u>No.</u>	<u>Exhibit</u>
A.	Letter, dated August 4, 2010, from Gregory J. Mulligan, General Counsel of Evonik Degussa Corporation, to George Wilbanks of Interocean.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: March 28, 2010

/s/ Patrick J. Hughes

Patrick J. Hughes

# EXHIBIT A



August 4, 2010

Evonik Degussa Corporation  
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Parsippany, NJ 07054  
www.evonik.com  
Phone +1 973-541-8867  
Fax +1 973-541-8850  
Cell +1 973-769-5472  
gregory.mulligan@evonik.com

**Via FedEx**

Mr. George Wilbanks  
Interocean Coal Sales LDC  
1000 Urban Center Drive, Suite 300  
Vestavia Hills, AL 35242

**Re: Contract No. 00001 by and between Evonik Trading GmbH ("Evonik Trading")  
and Interocean Coal Sales LDC ("Interocean") dated as of May 20, 2008  
(the "Agreement")**

**Our Matter Number: 201000581**

Dear Mr. Wilbanks:

This letter will serve as final notice that Interocean has delivered steam coal to Evonik Trading which substantially deviates from the agreed quality parameters as set forth in the Agreement. The sulphur content was substantially out of the contractual specifications with only 0.44 % Total Sulphur (a/r) which prevents its use in power stations. We have previously advised Interocean of this situation on July 20<sup>th</sup> and July 22<sup>nd</sup> following receipt of the product.

Pursuant to Section 3 of the Agreement, we hereby request that Interocean immediately enter into good faith negotiations with Evonik Trading representatives to establish an appropriate solution concerning Evonik Trading's receipt of product which failed to meet specifications. Please provide a date or dates within the next two weeks in order that we may commence these discussions. In the event Interocean is unwilling or unable to do so, we will deem this a breach of contract and Evonik Trading will seek to enforce any and all of its legal rights and remedies available at law or in equity.



Please be advised that we expect the next Drummond deliveries to be in the contractual ranges of the agreed specifications.

Your prompt response to the undersigned and Dr. Stephan Riezler (copied below) is appreciated.

Sincerely,

A handwritten signature in cursive script that reads 'Gregory J. Mulligan'.

Gregory J. Mulligan  
General Counsel  
Evonik Degussa Corporation

Copies to (via email):

Dr. Stephan Riezler	— Evonik Steag GmbH; Essen, Germany
Dr. Wolfgang Cieslik	— Evonik Steag GmbH; Essen, Germany
Klaus Bittmann	— Evonik Trading GmbH; Essen, Germany
Dr. Christian Hower-Knobloch	— Evonik Trading GmbH; Essen, Germany

Copy to (U.S. mail):

Tony Franco	— Interocean Coal Sales LDC; Vestavia Hills, AL, USA
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